



FEDERAL ELECTION COMMISSION  
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March 23, 2007

**MEMORANDUM**

**To:** Lawrence L. Calvert, Jr.  
Acting Associate General Counsel

**Through:** Patrina M. Clark  
Staff Director

Margarita Maisonet  
Chief Compliance Officer

**From:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Tom Hintermister  
Audit Manager

**AUDIT REFERRAL # 07-01**

**Subject:** Richard Morrison Congressional Committee- Referral Matter (A05-05)

On March 7, 2007, the Commission approved the final audit report on the Richard Morrison Congressional Committee. The final audit report includes matters that meet the criteria for referral to your office:

- Finding 1—Misstatement of Financial Activity
- Finding 2—Receipt of Loans that Exceed Limits
- Finding 5—Failure to File 48-Hour Notices

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Tom Hintermister at 694-1200.

**Attachment:**  
Referral Matters from the Audit Report of the Richard Morrison Congressional Committee

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## **Finding 1. Misstatement of Financial Activity**

### **Summary**

A comparison of RMCC's reported financial activity to bank records revealed a misstatement of cash on hand, receipts, and disbursements in 2004. In response to a recommendation in the Interim Audit Report, RMCC filed amended reports that corrected the misstatements.

### **Legal Standard**

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle
- Certain transactions that require itemization on Schedule A or Schedule B. 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

### **Facts and Analysis**

The Audit staff reconciled the reported activity to the bank records and determined there was a misstatement of ending cash on hand, receipts, and disbursements in 2004. The following charts detail the discrepancies between the totals on RMCC's disclosure reports and bank records for 2004.

<b>2004 Activity</b>			
	<b>Reported<sup>3</sup></b>	<b>Bank Records</b>	<b>Discrepancy</b>
<b>Opening Cash Balance</b>	<b>\$9,130</b>	<b>\$9,130</b>	<b>\$0</b>
<b>Receipts</b>	<b>\$614,480</b>	<b>\$744,819</b>	<b>\$130,339</b> Understated
<b>Disbursements</b>	<b>\$666,739</b>	<b>\$752,997</b>	<b>\$86,258</b> Understated
<b>Ending Cash Balance</b>	<b>\$-44,289<sup>4</sup></b>	<b>\$952</b>	<b>\$-45,241</b> Understated

<sup>3</sup> Based on reported activity as of audit notification on April 25, 2005.

<sup>4</sup> This figure does not foot due to a discrepancy of \$1,160 between the ending cash balance on the Post General Election Report and the beginning cash balance on the Year End Report.

### Receipts – 2004

The understatement of receipts was the net result of the following:

•	<b>Receipts Not Reported</b>	
	a. Contributions from individuals	+ \$ 89,790
	b. Loan from Candidate (see Finding 2)	+ 15,000
	c. Contributions from political committees	+ 8,760
	d. Earmarked contributions (net)	+ 4,194
	e. Offsets to operating expenditures	+ 3,785
	f. In-kind contributions	+ 1,094
•	<b>Unexplained difference</b>	+ 7,716
	<b>Net Understatement</b>	<u>\$ 130,339</u>

### Disbursements – 2004

The understatement of disbursements was the net result of the following:

•	<b>Disbursements Not Reported</b>	
	a. Repayment of Candidate loan (see Finding 2)	+ \$ 30,000
	b. Operating expenditures	+ 13,305
	c. Consulting services	+ 13,100
	d. Phone bank expenses	+ 10,300
	e. Media expenses	+ 7,262
	f. Bank charges	+ 6,916
	g. Reimbursements	+ 4,332
	h. Fundraising expenses	+ 2,653
	i. Purchase of campaign materials	+ 2,618
	j. In-kind contributions	+ 1,094
	k. Contributions to political committees	+ 1,050
•	<b>Disbursements Over Reported</b>	
	a. Disbursements reported twice	- 4,750
	b. Disbursements reported with wrong amounts (net)	- 1,228
	c. Disbursements reported and later voided with no adjustment	- 500
•	<b>Unexplained difference</b>	+ 105
	<b>Net Understatement</b>	<u>\$ \$ 86,258</u>

### Ending Cash Balance - 2004

The reporting discrepancies identified above also resulted in the misstatement of the reported cash balance throughout 2004. On December 31, 2004, the cash balance was understated by \$45,241.

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During audit fieldwork, the Audit staff informed the Candidate of the misstated activity noted above. In response, the Candidate stated problems with its campaign software may have caused some of the reporting errors. At the exit conference, the Audit staff provided the Candidate with a schedule of the reporting discrepancies. The Candidate indicated that amended reports would be filed to correct the misstatements.

#### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that RMCC amend its reports to correct the misstatements noted above. It was also recommended that RMCC amend its most recently filed report to correct the cash on hand balance and include a notation that the change is due to audit adjustments in 2004. In response, RMCC filed amended reports that corrected the misstatements.

### **Finding 2. Receipt of Loans that Exceed Limits**

#### **Summary**

The Candidate made two loans to RMCC totaling \$30,000 with funds provided by his parents. As a result, the Candidate's parents made excessive contributions to RMCC totaling \$28,000. The Audit staff recommended that RMCC provide documentation demonstrating that the loans were not made with funds from the Candidate's parents. Absent such evidence, it was recommended RMCC amend its reports to correctly disclose the source of these loans. In response, RMCC maintained the funds loaned to RMCC were the Candidate's personal funds.

#### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**B. Contribution Defined.** A gift, subscription, loan (except when made in accordance with 11 CFR §§100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan, to the extent it is repaid, is no longer a contribution. 11 CFR §100.52(a).

**C. Expenditures by Candidates.** Candidates for Federal office may make unlimited expenditures from personal funds. 11 CFR §110.10(a)

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**D. Definition of Personal Funds.** *Personal funds of the candidate* means the sum of all of the following:

(a) *Assets.* Amounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest;

(b) *Income.* Income received during the current election cycle, as defined in 11 CFR §400.2, of the candidate, including:

- (1) A salary and other earned income that the candidate earns from bona fide employment;
- (2) Income from the candidate's stocks or other investments;
- (3) Bequests to the candidate;
- (4) Income from trusts established before the beginning of the election cycle as defined in 11 CFR §400.2;
- (5) Income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;
- (6) Gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle, as defined in 11 CFR §400.2; and
- (7) Proceeds from lotteries and similar legal games of chance. 11 CFR §100.33

**E. Contents of Reports.** Each report must disclose for the reporting period and for the election cycle, the total amount of loans made by or guaranteed by the candidate and the identification of each person who makes, endorses or guarantees a loan to the committee. 2 U.S.C. §434(b)(2)(G) and (3)(E).

**Facts and Analysis**

The Candidate made two loans to RMCC totaling \$30,000 with funds provided by his parents. As a result, the Candidate's parents made excessive contributions to RMCC totaling \$28,000.<sup>5</sup>

On October 8, 2004, \$100,000 was wired from an investment account of the Candidate's parents to an account in the name of the Candidate's father and aunt. On October 13, 2004, these funds were wired from this account to a business account of the Candidate. On October 29, 2004 and November 1, 2004, withdrawals of \$15,000 were made from the Candidate's business account and deposited in the RMCC account. On November 16, 2004, RMCC repaid the Candidate \$30,000 and on November 18, 2004 the Candidate repaid his father \$100,000. For these transactions, RMCC reported only a loan from the Candidate of \$15,000 and did not report the repayments to the Candidate (see Finding 1).

<sup>5</sup> The excessive contribution amount equals the amount of the contribution (\$30,000) less the total available limit for each parent towards the general election (\$2,000). At the time the loan was made to RMCC, the Candidate's mother had contributed \$2,000 for the general election and the Candidate's father had not made a contribution for the general election.

It was also determined that a portion of the \$30,000 loaned by the Candidate was used to correct a shortfall in the RMCC account during a brief period prior to the general election.

The Candidate maintains that the funds loaned to RMCC were his personal funds.<sup>6</sup> However, it appears the funds in the Candidate's business account were necessary to pay other obligations of the business and, therefore, were not available to be loaned to RMCC. In fact, without the funds from the Candidate's parents, the Candidate's business account would have been overdrawn when the second \$15,000 loan was made to RMCC. Furthermore, the Candidate's business account was overdrawn shortly after the Candidate's father was repaid which indicates the funds in this account were committed for other expenses.

At the exit conference, the Audit staff provided the Candidate with its calculation of excessive contribution amounts resulting from the loans and explained the reporting discrepancies.

#### **Interim Audit Report Recommendation and Committee Response**

The Interim Audit Report concluded that based on an analysis of the bank account records provided by RMCC, the Candidate appears not to have had sufficient unobligated funds to make the \$30,000 loan to RMCC and, therefore, the funds received from his parents appear to be the source of the loan. It was recommended that should RMCC wish to challenge this conclusion, it should submit documentation to show that the Candidate did have sufficient unobligated funds. Such evidence was to include:

- Records to establish that the Candidate had sufficient personal funds, excluding the funds received from his parents, to make the loan to RMCC while still satisfying his non-campaign obligations. Such information could include records from the Candidate's business which could establish what, if any, types of business expenses were paid from other accounts and other available personal or business funds; and,
- Records that demonstrate the Candidate's legal right of access to or control over funds in the business account(s).

Absent such evidence, it was recommended that RMCC amend its reports (Schedules C) to correctly disclose the source of funds for these loans.

In response, RMCC maintained that the funds loaned to RMCC were the Candidate's personal funds and was composed of the \$19,602 from the Candidate's business account and \$10,398 from a business loan to the Candidate from his father. RMCC stated that the Candidate's father had previously made loans to his son and that this loan was an interest bearing short term loan for the purpose of paying business expenses pending the receipt of outstanding accounts receivable. No documentation in support of any of these

<sup>6</sup> Prior to the deposit of funds from the parents, the Candidate's business account had a balance of \$19,602.

statements was submitted, nor was any information provided about other available personal funds or the Candidate's legal right of access to funds in the business account.

## **Finding 5. Failure to File 48-Hour Notices**

### **Summary**

The Audit staff identified 13 contributions totaling \$31,750 for which RMCC did not file 48-hour notices. In response to the Interim Audit Report, RMCC acknowledged that it may have failed to completely report all the 48-hour notices. .

### **Legal Standard**

**Last-Minute Contributions (48-Hour Notice).** Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but not more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from the banks. 11 CFR §104.5(f).

### **Facts and Analysis**

The Audit staff reviewed those contributions of \$1,000 or more that were received during the 48-hour notice filing period for the primary and general elections. RMCC failed to file 48-hours notices for 13 contributions totaling \$31,750. These contributions are summarized below.

<b>Contribution Type</b>	<b>Primary</b>	<b>General</b>	<b>Total</b>
Loan from the Candidate <sup>7</sup>		\$15,000	\$15,000
Contributions from Individuals	\$5,750	\$10,000	\$15,750
Contributions from Political Committees		\$ 1,000	\$ 1,000
<b>Total 48-Hour Notices not filed</b>	<b>\$5,750</b>	<b>\$26,000</b>	<b>\$31,750</b>

At the exit conference, the Audit staff informed the Candidate of the failure to file 48-hour notices. The Candidate provided no explanation for not filing these notices.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that RMCC provide evidence that 48-hour notices were filed timely for those contributions mentioned above or provide any comments it has regarding this matter. In response, RMCC acknowledged that it may have failed to completely report all the 48-hour notices and noted that approximately half of the amount without 48-hour notices was attributable to a loan from the candidate. RMCC stated the Commission's regulations requiring the filing of 48-hour notices for such loans are unclear.

<sup>7</sup> This loan from the Candidate is also included in Finding 1 and Finding 2.